

REMARKS

Claim 18 is canceled without prejudice, and therefore claims 17 and 19 to 32 are pending in the present application.

It is respectfully submitted that all of the presently pending claims are allowable, and reconsideration is respectfully requested.

Applicants thank the Examiner for acknowledging the claim for foreign priority and for indicating that all certified copies of the priority documents have been received.

Claims 17 to 32 were rejected under 35 U.S.C. § 103(a) as unpatentable over U.S. Patent Application Publication No. 2004/0228366 ("Fuehrer") in view of Rahl Shah & Xuanming Dong, An Introduction to TTCAN, EE2900 Class Discussion, March 7, 2002, pages 17 to 35 ("Shah").

In rejecting a claim under 35 U.S.C. § 103(a), the Examiner bears the initial burden of presenting a *prima facie* case of obviousness. In re Rijckaert, 9 F.3d 1531, 1532, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993). To establish prima facie obviousness, three criteria must be satisfied. First, there must be some suggestion or motivation to modify or combine reference teachings. In re Fine, 837 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988). This teaching or suggestion to make the claimed combination must be found in the prior art and not based on the application disclosure. In re Vaeck, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991). Second, there must be a reasonable expectation of success. In re Merck & Co., Inc., 800 F.2d 1091, 231 U.S.P.Q. 375 (Fed. Cir. 1986). Third, the prior art reference(s) must teach or suggest all of the claim features. In re Royka, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974).

Claim 17 relates to a method for exchanging messages containing data between at least two stations over a bus system, the method including repeatedly transmitting over the bus system, by a first station, a reference message containing time information of the first station at at least one specifiable time interval, the time interval being subdivided as a basic cycle into time windows, *a pause period of variable duration being provided at an end of at least one basic cycle*, transmitting messages containing data in at least some of the time windows, and adapting the duration of the pause period to change a time of a start of a next basic cycle.

According to the presently claimed subject matter, several basic cycles and a pause period at the end of at least one basic cycle are provided. Since the pause period is

not intended for data transfer in the basic cycle, it is therefore located at the end of the basic cycle. With such a pause period it is possible to shift the start of the next/following basic cycle in the messaging to overcome timing problems in the messaging.

It is respectfully submitted that the Fuehrer and Shah references, either alone or combined, do not disclose or suggest, these features of the presently claimed subject matter. Indeed, the Office Action admits that the Fuehrer reference does not disclose or suggest the feature of repeatedly transmitting over the bus system of a reference message containing time information of the first station and the division of this information as a basic cycle into time windows, as provided for in the context of claim 17. More importantly, the Fuehrer reference does not disclose nor suggest the feature of the time gap or pause period at the end of at least one basic cycle, as in claim 17.

Likewise, the Shah reference also does not disclose or suggest the feature of a pause period at the end of a basic cycle, as with the claimed subject matter. Instead, the Shah reference refers on page 31 to an arbitration window within the basic cycle, the arbitration window being a normal time window in the basic cycle where the messages containing priority identifier are able to arbitrate. This means every station is able to send a message in this time window, but only the station with the highest priority achieves access to the bus (i.e., gains arbitration), whereby other time windows in a basic cycle are reserved for a special station or message (e.g. Msg A, Msg C. . .). So, in this instance, the arbitration window is a normal message window within the basic cycle and no pause period is provided.

The Shah reference also refers on page 31 to a free window, which is a message window not used for transmission (i.e., there is no need to use the window for transmission because the bus is not fully used), but this is a normal message window in the schedule that is usable for a message if needed without changing the message timing, the schedule or the start of a basic cycle. If a new station is added, or if a new message of an already connected station is to be transmitted, the free time window could be used. However, such a time window is also a normal message window and not a pause period. Moreover, even if the free window were to be treated as a pause period, such an alleged period does not occur at the end of a basic cycle, and therefore the window is not usable to change the start time of the following basic cycle because the first basic cycle has not finished when this free window arises.

In contrast, accordingly to the presently claimed subject matter, a pause period is provided at the end of at least one basic cycle to adapt the pause period to change start of

the following basic cycle which helps to correct timing errors in a cycle consisting of more than one basic cycle or only for the following basic cycle. As explained above, such considerations are not disclosed (and are not even addressed) by the Fuehrer and Shah references, whether taken alone or combined.

In any event and while the rejections may not be agreed with, to facilitate matters, claims 17, 31 and 32 have been rewritten to include the feature of claim 18 (which has been canceled without prejudice). It is respectfully submitted that any review of the applied references makes plain that they do not disclose nor suggest the feature in which the time of the start of the basic cycle is corrected by one of lengthening and shortening the duration of at least one pause period, as provided for in the context of the claimed subject matter of claim 17, as presented.

The revisions to claims 17, 31 and 32 by including the features of claim 18 do not raise any new issues or subject matter.

In view of the foregoing, it is respectfully submitted that even if the Fuehrer and Shah references are combined (the properness of which is not conceded) it does not render unpatentable claim 17, as presented, so that claim 17 is allowable.

Claims 19 to 30 depend from claim 17, as presented, and are therefore allowable for the same reasons as claim 17, as presented.

Claims 31 and 32, as presented, include features like those of claim 17, as presented, and are therefore allowable for essentially the same reasons as claim 17, as presented.

As further regards the obviousness rejections,, it is respectfully submitted that the cases of In re Fine, supra, and In re Jones, 21 U.S.P.Q.2d 1941 (Fed. Cir. 1992), make plain that the Office's generalized assertions that it would have been obvious to modify or combine the references do not properly support a § 103 rejection. It is respectfully submitted that those cases make plain that the Office Action reflects a subjective "obvious to try" standard, and therefore does not reflect the proper evidence to support an obviousness rejection based on the references relied upon. In particular, the Court in the case of In re Fine stated that:

The PTO has the burden under section 103 to establish a *prima facie* case of obviousness. It can satisfy this burden only by showing some objective teaching in the prior art or that knowledge generally available to one of ordinary skill in the art would lead that individual to combine the relevant teachings of the references.

This it has not done. . . .

Instead, the Examiner relies on hindsight in reaching his obviousness determination. . . . One cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention.

In re Fine, 5 U.S.P.Q.2d at 1598 to 1600 (citations omitted; italics in original; emphasis added). Likewise, the Court in the case of In re Jones stated that:

Before the PTO may combine the disclosures of two or more prior art references in order to establish *prima facie* obviousness, there must be some suggestion for doing so, found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. . . .

Conspicuously missing from this record is any evidence, other than the PTO's speculation (if it be called evidence) that one of ordinary skill . . . would have been motivated to make the modifications . . . necessary to arrive at the claimed [invention].

In re Jones, 21 U.S.P.Q.2d at 1943, 1944 (citations omitted; italics in original).

That is exactly the case here since it is believed and respectfully submitted that the Office offers only conclusory hindsight, reconstruction and speculation, which these cases have indicated does not constitute evidence that will support a proper obviousness finding. Unsupported assertions are not evidence as to why a person having ordinary skill in the art would be motivated to modify or combine references to provide the claimed subject matter of the claims to address the problems met thereby.

Also, in the Federal Circuit in the case of In re Kotzab has made plain that even if a claim concerns a “technologically simple concept” — which is not the case here — there still must be some finding as to the “specific understanding or principle within the knowledge of a skilled artisan” that would motivate a person having no knowledge of the claimed subject matter to “make the combination in the manner claimed,” stating that:

In this case, the Examiner and the Board fell into the hindsight trap. The idea of a single sensor controlling multiple valves, as opposed to multiple sensors controlling multiple valves, is a technologically simple concept. With this simple concept in mind, the Patent and Trademark Office found prior art statements that in the abstract appeared to suggest the claimed limitation. But, there was no finding as to the specific understanding or principle within the knowledge of a skilled artisan that would have motivated one

with no knowledge of Kotzab's invention to make the combination in the manner claimed. In light of our holding of the absence of a motivation to combine the teachings in Evans, we conclude that the Board did not make out a proper prima facie case of obviousness in rejecting [the] claims . . . under 35 U.S.C. Section 103(a) over Evans.

In re Kotzab, 55 U.S.P.Q.2d 1313, 1318 (Fed. Cir. 2000) (emphasis added). Here again, there have been no such findings to establish that the features discussed above of the rejected claims are met by the reference relied upon. As referred to above, any review of the reference, whether taken alone or combined, makes plain that the reference simply does not describe the features discussed above of the rejected claims.

In view of all of the foregoing, withdrawal of the obviousness rejections is respectfully requested.

In sum, claims 17 and 19 to 32 are allowable.

Conclusion

It is therefore respectfully submitted that all of the presently pending claims are allowable. It is therefore respectfully requested that the rejections be withdrawn. All issues raised by the Examiner having been addressed, an early and favorable action on the merits is respectfully requested.

Respectfully submitted,
KENYON & KENYON LLP

Date:

6/26/2007

By:

Gerard A. Messina
Reg. No. 35,952

One Broadway
New York, New York 10004
(212) 425-5288

CUSTOMER NO. 26646

Handwritten notes:
33, p. 5
Hanan C
DEO/174H